

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHERYLANN JONES,

Plaintiff,

**ANSWER BY CITY TO
AMENDED COMPLAINT**

-against-

JURY TRIAL DEMANDED

THE CITY OF NEW YORK, POLICE OFFICER
ROBERT O'BRIEN, SGT. DWIGHT SMITH, and
DETECTIVE EBONY HUNTLEY,

07 Civ. 5625 (JSR)

Defendants.

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Defendant City of New York, by its attorney Michael A. Cardozo, Corporation Counsel of the City of New York, as and for an answer to the Amended Complaint, respectfully alleges upon information and belief as follows.

1. Denies the allegations set forth in paragraph "1" of the Amended Complaint, except admits that plaintiff purports to bring this action as stated therein.
2. Denies the allegations set forth in paragraph "2" of the Amended Complaint.
3. Denies the allegations set forth in paragraph "3" of the Amended Complaint.
4. Denies the allegations set forth in paragraph "4" of the Amended Complaint.
5. Denies the allegations set forth in paragraph "5" of the Amended Complaint.
6. Denies the allegations set forth in paragraph "6" of the Amended Complaint, except admits that plaintiff purports to bring this action and invoke the jurisdiction of this Court as stated therein.
7. Denies the allegations set forth in paragraph "7" of the Amended Complaint, except admits that plaintiff purports to bring this action in this venue as stated therein.

8. Denies the allegations set forth in paragraph “8” of the Amended Complaint, except admits that a document purporting to be a notice of claim was received by the City of New York Office of the Comptroller on March 7, 2007.

9. Defendant states that the allegations set forth in paragraph “9” of the Amended Complaint constitute legal conclusions to which no response is required.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Amended Complaint.

11. Defendant states that the allegations set forth in paragraph “11” of the Amended Complaint constitute legal conclusions to which no response is required.

12. Denies the allegations set forth in paragraph “12” of the Amended Complaint, except admits that the City is a municipal corporation.

13. In response to the allegations set forth in paragraph “13” of the Amended Complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

14. Denies the allegations set forth in paragraph “14” of the Amended Complaint.

15. Denies the allegations set forth in paragraph “15” of the Amended Complaint.

16. Denies the allegations set forth in paragraph “16” of the Amended Complaint.

17. In response to the allegations set forth in paragraph “17” of the Amended Complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

18. Denies the allegations set forth in paragraph “18” of the Amended Complaint.

19. Denies the allegations set forth in paragraph “19” of the Amended Complaint.

20. Denies the allegations set forth in paragraph “20” of the Amended Complaint.

21. In response to the allegations set forth in paragraph "21" of the Amended Complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

22. Denies the allegations set forth in paragraph "22" of the Amended Complaint.

23. Denies the allegations set forth in paragraph "23" of the Amended Complaint.

24. Denies the allegations set forth in paragraph "24" of the Amended Complaint.

25. In response to the allegations set forth in paragraph "25" of the Amended Complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

26. Denies the allegations set forth in paragraph "26" of the Amended Complaint.

27. Denies the allegations set forth in paragraph "27" of the Amended Complaint.

28. Denies the allegations set forth in paragraph "27" of the Amended Complaint.

29. In response to the allegations set forth in paragraph "29" of the Amended Complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

30. Denies the allegations set forth in paragraph "30" of the Amended Complaint.

31. Denies the allegations set forth in paragraph "31" of the Amended Complaint.

32. In response to the allegations set forth in paragraph "32" of the Amended Complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

33. Denies the allegations set forth in paragraph "33" of the Amended Complaint.

34. Denies the allegations set forth in paragraph "34" of the Amended Complaint.

35. In response to the allegations set forth in paragraph "35" of the Amended Complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

36. Denies the allegations set forth in paragraph "36" of the Amended Complaint.

37. Denies the allegations set forth in paragraph "37" of the Amended Complaint.

38. In response to the allegations set forth in paragraph "38" of the Amended Complaint, defendant repeats and realleges the responses set forth in all the preceding paragraphs of this answer as if fully set forth herein.

39. Denies the allegations set forth in paragraph "39" of the Amended Complaint.

40. Denies the allegations set forth in paragraph "40" of the Amended Complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

41. The Amended Complaint fails to state a claim upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

42. Any injuries alleged in the Amended Complaint were caused, in whole or in part, by plaintiff's culpable or negligent conduct.

FOR A THIRD AFFIRMATIVE DEFENSE

43. At all times relevant to the acts alleged in the Amended Complaint, the duties and functions of defendant's officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City of New York is entitled to governmental immunity from liability.

FOR A FOURTH AFFIRMATIVE DEFENSE

44. Plaintiff provoked any incident.

FOR A FIFTH AFFIRMATIVE DEFENSE

45. Plaintiff's claims are barred, in whole or in part, because plaintiff failed to comply with all conditions precedent to suit.

FOR A SIXTH AFFIRMATIVE DEFENSE

46. Defendant has not violated any rights, privileges or immunities secured to plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has the defendant violated any act of Congress providing for the protection of civil rights.

FOR A SEVENTH AFFIRMATIVE DEFENSE

47. There was probable cause for plaintiff's arrest and prosecution.

WHEREFORE, defendant City of New York respectfully requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 6, 2007

MICHAEL A. CARDOZO
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By: 

Hillary A. Frommer (HF 9286)
Senior Counsel

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-against-

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Defendants.

**ANSWER BY CITY OF NEW YORK TO AMENDED
COMPLAINT**

MICHAEL A. CARDOZO

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New York, N.Y. 10007*

*Of Counsel: Hillary A. Frommer
Tel: (212) 788-0823
NYCLIS No.*

Due and timely service is hereby admitted.

New York, N.Y., 200.....

..... Esq.

Attorney for